UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

SCHNELLECKE LOGISTICS ALABAMA, LLC	)	
	)	
and	)	**Case 10-CA-199183**
	)	
DONALD EDWIN BUSSEY III, AN INDIVIDUAL	)	
	)	
SCHNELLECKE LOGISTICS ALABAMA, LLC	)	
	)	
and	)	**Case 10-CA-199732**
	)	
LASHOAN THOMAS, AN INDIVIDUAL	)	
	)	
SCHNELLECKE LOGISTICS ALABAMA, LLC	)	
	)	
and	)	**Case 10-CA-201235**
	)	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKS OF AMERICA (UAW) REGION 8	)	

RESPONDENT'S REPLY TO COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO STAY PROCEEDINGS

Schnellecke Logistics Alabama, LLC ("Schnellecke" or "Respondent") replies[1] as follows to Counsel for the General Counsel's ("CGC") Opposition to Schnellecke's November 13, 2017 Motion to Stay Proceedings pending resolution of its challenge to National Labor Relation Board Administrative Law Judges' Constitutional authority:

1. CGC's Opposition claims Respondent's Motion to Stay ("Motion") was "improperly filed" with the National Labor Relations Board ("Board") and not with the Chief Administrative Law Judge as required under § 102.24 of the Board's Rules and Regulations (see

[1] Schnellecke's reply is filed pursuant to §102.24 (c) of the Board's Rules and Regulations.

CGC's Opp., pp. 2-3) but the Opposition ignores that under the same section the Board may "postpone[] indefinitely" a hearing. Respondent's Motion (which was filed in conjunction with a dispositive motion to dismiss filed with the Board) simply requested that the Board exercise its authority under § 102.24 to postpone indefinitely the hearing, certainly a proper exercise of the Board's authority. CGC's contention that Respondent cannot ask the Board to do what it is expressly permitted to do is wrong. Regardless, if Respondent's Motion was improperly filed (*it was not*[2]) the same justifications for postponement remain, and the Board should stay the proceedings pursuant to §102.24 of the Board's Rules and Regulations.

2. CGC's Opposition claims that the Board should not postpone the scheduled hearing because it did not postpone the hearing in WestRock Services, Inc., Case No. 10-CA-195617 where the employer also challenged the Administrative Law Judge's ("ALJ") Constitutional authority (see CGC's Opp., pp. 3-4), but the Opposition ignores that (1) the motion to dismiss in that case was filed just days before the hearing whereas, here, the motion to stay was filed over twenty-one days before the scheduled hearing and (2) the employer did not ask for a stay. Just as importantly, simply citing to WestRock Services, Inc. is unpersuasive as CGC provides no substantive argument, explanation or critical analysis addressing why this case should not be stayed; CGC fails to address that if Respondent's motion to dismiss is successful the appointed ALJ will lack authority to hear this case and a hearing would be improper and a waste of time and resources. Resolution of the motion to dismiss is necessary prior to proceeding with a hearing in this matter.

3. CGC's Opposition argues a stay would frustrate the remedial purposes of the Act (see CGC's Opp., pp. 4-5) yet cites no supporting authority. Instead, CGC contends that a stay is

[2] In an abundance of caution, Respondent also filed a Motion to Stay with the Chief Administrative Law Judge.

not proper because Section 10(j) of the National Labor Relations Act permits interim injunctive relief and, here, authorization to seek such interim relief has been requested to the Board (but that request is still pending). (Id.). CGC's position is difficult to understand. The availability of 10(j) relief under appropriate circumstances is the reason cases should not be expedited *sua sponte* by Regional Directors (otherwise Regional Directors can circumvent 10(j)'s procedural safeguards).

4. CGC's final argument is that any appointment defects can be cured (see CGC's Opp., p. 6), but this fallback argument only underscores that there is a problem here. Such "ratification" has not yet happened and the cases cited by CGC are all premised on invalid appointments that had *already* been ratified and are not persuasive here. Consumer Fin. Prot. Bureau v. Gordon, 819 F.3d 1179, 1190–91 (9th Cir. 2016), cert. denied, 137 S. Ct. 2291 (2017) ("The subsequent valid appointment, coupled with Cordray's August 30, 2013 ratification. . ."); Advanced Disposal Servs. E., Inc. v. N.L.R.B., 820 F.3d 592 (3d Cir. 2016) ("Board's *nunc pro tunc* ratification of all administrative, personnel, and procurement matters approved by Board or taken by or on behalf of Board when Board had lacked a quorum, Board's express ratification of appointment of Regional Director, and Regional Director's ratification of all actions he had taken during that period. . ."); Fed. Election Comm'n v. Legi-Tech, Inc., 75 F.3d 704, 708 (D.C. Cir. 1996) ("Here, as the FEC points out, the constitutional violation, *which obliged us to dismiss the case in NRA*, has been remedied—or at least the FEC purported to remedy the defect.").[3]

WHEREFORE, Schnellecke asks that its Motion to Stay be granted.

[3] Doolin Sec. Sav. Bank, F.S.B. v. Office of Thrift Supervision, 139 F.3d 203 (D.C. Cir. 1998) has been superseded by Statute as Stated in Wilkes-Barre Hospital Company, LLC v. National Labor Relations Board, D.C. Cir., May 19, 2017.

/s/ Marcel L. Debruge
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed and a copy sent to the following via e-mail and/or U.S. Mail, on this the 27th day of November, 2017:

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